19 38

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(SUBJECT.)

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Filing and Routing Records

Ref.A3.No.4960/37.
2412-36.

South Kanara Collector's Office,
Mangalore, 17th January 1938.

RC 102
A342

From

M.R.Ry. Rao Bahadur M. V. Vellodi, Avl., B.A.,
Collector of South Kanara.

The Secretary to the Board of Revenue.
Land Revenue & Settlement.
Madras.

Sir,

Escheat - (South Kanara) - Puttur Taluk - Ujre, Vodilnal and Kaliya villages - Properties of the late Govinda Murdithaya - Report submitted.

******

The late Govinda Murdithaya, son of Ramanna Murdithaya, owner of the properties comprised in holdings Nos.37 of Ujre, 71 of Vodilnal and 32 of Kaliya in Puttur Taluk was a Shivalli Brahmin, governed by the Mithakshara Law of inheritance. He died intestate somewhere in 1914 leaving behind him his widow, Kaveramma, who was a minor at that time. On his death, the properties happened to be registered in the name of this minor widow Kaveramma, by guardian - mother, Kallyani. The widow died on 23.9.1932.

2. Having been in possession of the properties of her son-in-law, this Kallyani, as guardian of her widowed daughter, Kaveramma, gave on 13.10.1914 on permanent mulgeni the ------- properties of Vodilnal and Kaliya villages to one Anthony D'Souza who was originally the chalgeni tenant of the said properties for a mulgeni rent of 20 muras of rice, Rs.20/- in cash and 8 annas worth of vegetables. The mulgeni lease shows that the tenant Anthony D'Souza advanced to the lessor a sum of Rs.100/- as a security for covering the loss, if any, ----- caused by him by failure to pay the rent in time, or by ------

spoiling the property or by cutting reserve trees, etc. It also stipulates that in view of this advance, the mulgeni tenant be given a deduction of 2 muras of rice annually out of the rent payable by him, in lieu of the interest on the sum advanced by the tenant.

3. On her attaining majority, the widow Kaveramma executed on 5.10.1917 a simple mortgage deed for Rs.600/- in respect of the entire properties in the three holdings referred to above in favour of her own brothers Naraina Shastri and Gopala Shastri, agreeing to pay interest at 9% per annum. The mortgage deed purports to show that the mortgagor's deceased husband, Govinda Murdithaya had on 23.6.1914 executed in favour of one Shanbhogue Narnappaya a demand promissory note for Rs.150/- for the purpose of clearing off the debts incurred by him for the expenses of his sickness, that this Narnappaya had filed a suit, O.S.No.291/17 on the file of the District Munsiff's Court, Karkal for the recovery of the amount and obtained a decree against the widow for Rs.206.1.6 and that the mortgage was necessitated for the paying off of this debt, and for meeting certain other items of expenditure as detailed below:-

(1) Amount due to Narnappaya with interest	Rs.233. 1. 6
(2) Costs incurred by the mortgagees for the obsequies, etc., of the deceased Govinda Murdithaya and due to them.	Rs.150. 0. 0
(3) Interest on this up to the date of the deed at 12½% per annum.	Rs. 60. 0. 0
(4) Cost incurred by the mortgagees for the anniversary ceremony of the said Govinda Murdithaya, and also expenses of pilgrimage due to them.	Rs.130. 0. 0
(5) Cost of registration, etc., and also expenses connected with the suit of Narnappaya.	Rs. 26.14. 6
Total:	Rs.600. 0. 0

sold at Court auction and himself purchased it for Rs.210/-. He, however, subsequently retransferred the property to the widow by means of a registered sale deed dated 12.11.1923 for the same amount (Rs.210/-) which along with the balance due to him was, as stipulated in the original mortgage, paid by the widow's brothers - the mortgagees.

5. The mortgagees, however, transferred their mortgage right in favour of Narains Bhatta of Rayi for Rs.893.4.0 made up of the principal amount of Rs.600/- and interest up to date of Rs.293.4.0 as per registered deed No.555, dated 13.11.1923. This Narayana Bhatta of Rayi appears to have transferred his right for Rs.1000/-as per registered deed No.463, dated 12.10.1932 to Narains Kaukrannaya. This deed is not among the records, but the fact is borne out by an encumbrance certificate.

6. The widow appears also to have obtained on pronote Rs.216/- on 11.3.1929 from one Venkatramanacharya who filed suit and got an ex-parte decree for Rs.229.14.10 including interest, and costs of Rs.37/- and future interest at 6% from 5.11.1929. The rights under this decree seem to have been subsequently transferred in favour of one Budoli Narayana Bhatta, who bought the equity of redemption of the properties in all the three holdings to sale subject to the mortgage in favour of Narains Kaukrannaya and purchased the same himself.

plaintiffs failed to establish that they were reversioners of the deceased Govinda Murdithaya. The District Munsiff's finding was also upheld by the District Judge in appeal suit No.369/1920. In the present enquiry no other persons have come forward as heirs. It is thus clear that the properties are liable to escheat to Government.

8. The question now is whether all the encumbrances are binding on the estate and consequently on Government. There is no doubt that the decree debt of Rs.233.1.6 of Shanbhogue Narnappaya is binding on the properties as it appears to have been incurred by the deceased owner Govinda Murdithaya himself. The subsequent debts included in the mortgage deed as having been incurred by the widow amount to Rs.340/- exclusive of the cost of registration. They are shown as costs already incurred by her brothers for the deceased owner's obsequies, first annual anniversary and pilgrimage and also interest. These are also binding though the amounts are pretty large and the place of ------ pilgrimage was not been mentioned - please see Section 181 of Mullah's Hindu Law. In this connection it may be mentioned that immediately after the death of the last owner, the widow came in possession of a sum of Rs.100/- being the advance made by the mulgeni lessee, which removes the necessity, if any, for incurring the debt of Rs.150/- alleged to have been spent for the obsequies of the deceased If the Government impeach the mortgage on the ground that the amount is large and was not necessary, the burden of proof will be on the mortgagee to prove that the amount was necessary - please see Section 182 of Mullah's Hindu Law. The subsequent debt of Rs.229.14.10 referred to in paragraph 6 above is, however, on a different footing altogether. There was absolutely no necessity for the widow to incur this debt as all the valid purposes for which she could incur debts were exhausted in her previous mortgage deed for Rs.600/- executed in favour of her brother

The mulgeni lease in favour of Anthony D'Souza is clearly invalid also - please see Section 186 of Mullah's Hindu Law. The transactions referred to in paragraph 4 above appear to be wholly collusive and must have been brought about with a view to create a new right in the widow and cannot therefore be binding on the Government.

The mulgeni tenant, Anthony D'Souza, got assigned in his name the properties comprised in holding No.22 of Vodilnal by making use of and solely on the strength of his position as mulgeni tenant. These properties formed kumaki and kumaki adjunct to the properties comprised in holding 71 of Vodilnal and 32 of Kaliya and are therefore accretions thereto, liable to be made over along with the mulgeni lands. In the above circumstances, all the properties were proposed to be escheated to Government and a notice inviting claims thereto was published in the District Gazette, dated 20.3.1937. The time allowed in this notice expired on 20.9.1937, but only 3 claims have been received as detailed below:-

(1) Anthony D'Souza.- The claimant is the mulgeni tenant referred to above. His plea is that the mulgeni was granted to him in accordance with the wishes of the deceased owner. This cannot be believed, nor can it be made a basis for a claim. The mulgeni executed on behalf of a limited heir, is clearly invalid and liable to be set aside. Of course, the claimant will be entitled to get the value of his improvements, which will be paid to him.

as stated in paragraph 8 above and nothing can be done at present.

10. At the time of the original enquiry by subordinate officers. one Narayana Bhatta, son of Barebayi Gopalkrishna Bhatta of Rayi village, Mangalore Taluk, claimed all the properties (except those in holding No.22 of Vodilnal) by right of an unregistered will purporting to have been executed by Kaveramma, widow of the late Govinda Murdithaya, on 23.9.32. This man is no other than the person in whose favour the mortgage was once transferred as stated in paragraph 5 above. The will is dated 23.9.32, which is the date of the death of the widow. The Government Pleader, Mangalore whom I have consulted, states that this man is not a necessary party.

11. The estimated market value of the properties exclusive of the cost of improvements is found to be about Rs.2500/. Even if the Government have to pay the entire mortgage amount which seems doubtful, the properties seem to be well worth escheating. I enclose copies of the Mangalore Government Pleader's letters Ref.A.No.584/37, dated 9.11.1937 and Ref A.624/37, dated 26.11.1937 together with a draft plaint and recommend that the Board may be pleased to declare escheat the properties described in the application enclosed and to approve the draft plaint.

12. The records detailed in the margin are enclosed for reference.

1. Current file pp.1 to 84. (M) (R)
2. Taluk Office file pp.1 to 246.
3. Beltangadi Deputy Tahsildar's file D.R.22/1343. (E)
4. Do. D.R.43/1342. (A)
5. Do. D.R.60/1340. (T)
6. District Gazette, dated 20.3.37. (P)

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S.No. /1937.

Between

The Province of Madras represented by the Collector of South Kanara.	Plaintiff.
And	
1. Narayana Bhatta. 2. A.D'Souza. 3. Narayana Kakkarnayya.	Defendants.

Plaint under Section 26 Order VII Rule 1 C.P.C.

The abovenamed plaintiff begs to state as follows:-

1. That the plaintiff is the Government of Madras Province ~~Province and sues~~ represented by the Collector of South Kanara.

The above is the address of the plaintiff for service of all process.

II. That the 1st defendant is the son of Budoli Krishna Bhatta residing at Panjikallu village of Mangalore Taluk, the 2nd defendant is the son of Mingel Souza residing at Mundel in Laila village, Puttur Taluk, and the 3rd defendant is the son of Rama Kakkarnayya and resides at Pilimogru village of Mangalore Taluk.

III (1). That the properties fully described in Schedules A and B herebelow, originally belonged to one Govinda --- Murdithayya, who died in or about the year 1914 leaving behind him only a young widow named Kaveri, who was a minor at that time and no other heirs. Taking advantage of the young age of the widow, various persons seem to have taken several documents from her making false and fraudulent recitals. The said documents or transanctions entered into by the said widow Kaveri are not binding on the reversion.

(2). That the widow Kaveri died on or about 28.7.1932 As there is no other heir to the last male holder Govinda Murdithayya his properties have escheated to the Government. Claims in respect of the said property were called for by publication in the District Gazette, and no person has put forward his claim to the property as heir to the deceased Govinda Murdithayya. Plaintiff is therefore entitled to claim possession of the properties of the said Govinda Murdithayya as having escheated to the Government free from the several alienations in favour of the defendants.

(3) That on 13-10-1914 Kalyani the mother of the aforesaid Kaveri, purporting to act on behalf of her---- minor daughter, gave the A Schedule properties on mulgeni to the 2nd defendant taking a premium of Rs.100-0-0, reserving, after allowing for deductions, a yearly rental of 17 muras of Kuchige rice 1 mura of Belthige rice (mura of 43 seers) Rs.20-0-0 in cash and 2 vegetable loads. The recitals made in the said document are false and fraudulent the rental reserved thereunder is low and grossly inadequate. Besides, the said transaction was ultra vires - the powers of Kalyani and Kaveri being limited - and is not binding on the estate of the last maleholder beyond the life-time of the widow Kaveri. The 2nd defendant has no manner of right to continue in possession of the A Schedule properties after the death of Kaveri on the strength of the aforementioned mulgeni deed dated 13.10.1914 and he is bound to surrender possession of the same together with mesne profits for three years up to date and future mesne profits from this date till the date of giving up of possession.

(4) The 2nd defendant got assigned in his name the "C" Schedule properties by making use of and solely on the --- strength of his position as mulgeni tenant. The said properties which were Kumki and kumaki adjunct (lagthi) to the A Schedule properties are therefore accretions to the

A Schedule properties and he is bound to surrender possession of the same along with the A Schedule properties and also pay past and future mesne profits. The mesne profits of A and C Schedule properties may be fixed at 33 muras of rice and Rs.5-0-0 per annum, which is a fair rate of damages for use and occupation.

(5) That soon after the death of the late Govinda Murdithayya, the brothers of his widow Kaveri, taking ---- advantage of her young age, got her to execute a document in their favour on 5-10-1917 purporting to be a mortgage for Rs.600-0-0 charging the A and B schedule properties for the payment of the said sums. The said document is a fraudulent one, not supported by consideration and was got up by the brothers of the said Kaveri in order to enrich themselves at the cost of the estate by making all sorts of false and fictitious recitals. The third defendant is the present holder of the mortgage right. The said mortgage is not binding on the plaintiff who is entitled to get possession of the A and B schedule properties free from the objections on the part of the third defendant.

(6) That one Venkatramana Acharya seems to have got executed in his favour a promissory note by the said Kaveri on 11-3-1929 for Rs.216-0-0 carrying interest at the rate of 12½% p.a. He seems to have filed a suit O.S.472/1929 on the file of this court on the strength of the said promissory note and obtained anexparte decree against the assets of Govinda Murdithayya. The rights under the said decree seem to have been subsequently transferred in favour of the 1st defendant who brought the equity redemption of the A and B schedule properties to sale subject to the aforesaid mortgage dated 5-10-1917 in favour of the 3rd defendant and purchased the same himself.

(7) Plaintiff submits that the promissory note executed

by the said Kaveri was not for any consideration binding on the estate of Govinda Murdithayya. Venkatramana Acharya was not entitled to get a decree binding on the estate of Govinda Murdithayya, on the strength of the said promissory note. The collusive and fraudulent decree obtained in O.S.472/1929 is therefore not binding on the estate of Govinda Murdithayya and against the plaintiff. Plaintiff is therefore entitled to have a declaration to that effect. Further the proceedings in execution of the said decree are absolutely invalid having been taken against one Narayana Bhatta who has absolutely no right to represent the estate of Govinda Murdithayya and 1st defendant has acquired no manner of right in the plaint properties on the strength of the said proceedings. Plaintiff is therefore entitled to recover possession of the A and B Schedule properties free from the objections of the 1st defendant. He is bound to pay mesne profits in respect of the B schedule property at the rate of 12 muras of rice and Rs.12-0-0 ~~from 15-11-1934 up to date~~ for the last three years and future mesne profits at the same rate up to date of delivery.

(8) The cause of action for this suit arose on 23-9-1932 at Ujre, Kaliya and Vodinal villages within the jurisdiction of this court.

IV. Plaintiff values the reliefs in this suit at Rs. both for court fees and jurisdiction and a court fee of Rs. is paid herewith.

V. Prays therefore for judgment and decree.

(1) For a declaration that the decree in O.S.472/1929 on the file of this court obtained by Venkatramana Acharya against Kaveri Amma is not binding on this Plaintiff and directing the defendants 1 and 2 to surrender possession of the plaint A, B and

C schedule properties to the plaintiff. This relief is valued at Rs.725-0-0 being 10 times the assessment of Rs.45-0-0 and Rs.275-0-0 being the value of buildings.	Rs. 725- 0- 0
(2) For a declaration that the mortgage deed dated 5.10.1917 executed by Kaveri in favour of Gopala Shastri and another for Rs.600-0-0 is not valid and binding against the plaintiff or the rights of the plaintiff in the A and B schedule properties. This relief is valued at Rs. for purposes of jursidiction and a fixed court fee of Rs. 15/- is paid under Art. 17-A(1) of Sch. II of the Court Fees Act (Madras amendment)	Rs.
(3) Directing the 1st defendant to pay mesne profits at the rate of 12 muras of rice and Rs.12-0-0 per annum ~~from 15-11-1934 up to~~ for the last 3 years date in respect of B schedule properties rice being valued at the average court rate of Rs.3-9-0 for 1934, Rs.3-11-10 for 1935, Rs.3-5-6 for 1936 and Rs.3-8-0 for 1937 per mura.	
(4) Directing the 1st defendant to pay plaintiff future mesne profits at the usual court rate from this date till delivery of possession of properties.	0- 0- 0
(5) Directing the 2nd defendant to pay mesne profits at the rate of 33 muras of rice and Rs.5-0-0 in cash per annum from the past three years in respect of the A and C -----	

schedule properties rice being valued at the average court rate of Rs. 3-9-0 for 1934 dated) Rs. 3-11-10, for 1935 Rs. 3-5-6 for 1936 and 3-8-0 for 1937.	
(6) Future mense profits at the usual court rate from this date till delivery of possession.	0-0-0
(7) Costs of suit and further interest on the aggregate from this date till delivery of possession.	0-0-0
(8) Such other and further reliefs as the court deems fit to grant.	0-0-0
Total ...	

Schedule A.

Properties situated in Vodilnal village of Puttur Taluk, South Kanara District and comprised in Patta No.71.

Survey No.	Extent.	Kisam.	Assessment.
74-1	2.73	Nanja	13-11-0
74-6	0.02	Punja	0-1-0
			13-12-0

Properties situated in Kaliya village of Puttur Taluk South Kanara District and comprised in Patta No.32.

Survey No.	Kisam.	Extent.	Assessment.
107-1	Nanja	0.84	1-4-0
107-2	Punja	2.47	1-14-0
107-3	Nanja	1-5	2-11-0
107-4	Nanja	0.91	1- 6-0
107-5	Punja	0.45	0- 7-0
108-2	Bagayat	0.12	0- 4-0
			7-14-0

All trees and buildings standing thereon or belonging thereto.

Schedule B.

Properties situated in Ujre village of Puttur Taluk,

South Kanara and comprised in Patta No. 37.

Survey No.	Kisam.	Extent.	Assessment.
31 - 1	Nanja	1.87	3-12-0
31- 2	Bagayat	0.18	1- 4-0
31 - 3	Nanja	2.32	3- 8-0
31- 4	Nanja	2.0	12-8-0
20- 5	Nanja	0.47	0-15-0
			21-15-0

All trees and buildings standing thereon or belonging thereto.

Schedule C.

Properties situated in Vodilnal village in Puttur Taluk, South Kanara District comprised in Patta No. 22.

Survey No.	Kisam.	Extent.	Assessment.
77 - 3	Nanja	0.08	0-3-0
157 - 2	Punja	1.77	0-7-0
158- 3	Punja	2.99	0-12-0
77- 5B	Punja	0.20	0-1-0
			1-7-0

All Trees, buildings and appurtenances standing thereon or belonging thereto.

South Kanara Collector's office,
Mangalore, dated 17 - 1 - 1938.

For Collector.

15.1.38

18.1.38.

15

Application for declaring in

South Kanar

1. Taluk									Pu
2. Village, estate or Township.	No. 9 Ujre village.								No.150 V
3. Description of property.	Wet.			Garden.			Wet.		
	R.S.No.	Extent.	Assess-ment.	R.S. No.	Extent.	Assess-ment.	R.S. No.	Extent.	Ass-me
			Holding No.37.						Hol
	31-4	2.00	12-8-0	31-2	0.18	1-4-0	74-1	2.73	13-
	31-1	1.87	3-12-0						
	31-3	2.32	3-8-0						Hol
	20-5	0.47	0-15-0				77-3	0.08	0-
4. Area in acres (Total).		6.66			0.18			2.81	
5. Assessment or quit rent.		Rs.20-11-0			Rs. 1-4-0			Rs. 13-14-0	
6. Estimated yearly rent value - net after deducting assessment.					Rs.23-8-0				
7, Estimated market value.					Rs. 600/-				
8. Date of death of ie last holder.	Last holder Govinda Murdithaya - widow Kaveri- In or about on or about 28-9-32.								
9. Date of publication of notice inviting claims.	20th March 1937.								
10. Names of claimants and their relationship to the deceased.	(1) Narayana Bhatta, purchaser of the properties by right of Court sale.								(2
11. Particulars of objections raised. 12. Collector's recommendation.	Please see separate report enclosed.								

South Kanara Collector's office,

Mangalore, dated 17 - 1 - 1938.

iveable property escheat.

District.

nal. No. 6 Kaliyal.

Dry.			Wet.			Garden.			Dry.		
R.S. No.	Extent	Assessment.	R.S. No.	Extent	Assessment.	R.S. No.	Extent	Assessment.	R.S. No.	Extent	Assessment.
No.32.						Holding No.32.					
74-6	0.02	0-1-0	107-3	1.05	2-11-0	108-2	0.12	0-4-0	107-5	0.45	0-7-0
No.22.			107-4	0.91	1- 6-0				-2	2.47	1-14-0
157-2	1.77	0-7-0	107-1	0.84	1- 4-0						
158-3	2.99	0-12-0									
77-5B	0.20	0-1-0									
	4.98			2.80			0.12			2.92	
	Rs. 1-5-0			Rs. 5-5-0			Re.0-4-0			Rs. 2-5-0	
	Rs.56-3-0						Rs.21-4-0				
	Rs. 1400/-						Rs. 525/-			1400 600 525	2525

4.

ntony D'Souza, Mulgeni
enant of the properties in
oldilnal and Kaliya villages.

(3) Narayana Kaukranaya present
mortgagee of the properties.

For Collector. 15-1-38.

10.1.38

Letter-from the Government Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 9.11.1937.
No.-Ref.No.A-584/37.

******

Escheat - Puttur Taluk - Ujre, Vodilnal and Kaliya villages - Properties of the late Govinda Mardithaya.

Ref.A3.No.4960-37, dated 6-10-1937.
2412-36,

******

After going through the papers sent to me I have prepared a draft of the plaint to be filed for recovering possession of the properties that have escheated to the Government on account of the death of Govinda Mardithaya without any heirs. Regarding the mulgeni in favour of the 2nd defendant, A. D'Souza, and the court sale in favour of Narayana Bhatta, I am of opinion that they may not be binding on the estate. The mortgage deed dated 5.10.1917 stands on a slightly ------- different footing. No doubt the alienee has to show that the alienation is one for necessities binding on the estate. The consideration for the mortgage consists of two items:- (1) amount said to be due under a promissory note alleged to have been executed by Govinda Mardithaya and in respect of which the promisee got a decree, (2) the amounts spent by the mortgagee for the funeral expenses and obsequies of the deceased. In case it is proved that the deceased had himself executed the promissory note which was the subject matter of O.S.291/1917 on the file of the District Munsif of Karkal, then the mortgage will be binding to the extent of Rs.233.1.6. A widow is entitled to borrow for the funeral expenses of the deceased such amount as may be necessary having regard to the status of the deceased. The question to be considered in this case is whether the amount was actually borrowed and what is the amount that may be considered fair having regard to the value of the assets left by the deceased. It may also be noted in this connection that just about that time the widow has ------ Rs.100.0.0 taken as premium under the mulgeni deed in favour

of the second defendant. As to what amount may be held binding on this head is a question of fact to be decided by the Court on the evidence on record.

2. In relief No.2, the value for purposes of jurisdiction will have to be put by calculating the amount due under the terms of the mortgage bond up to the date of the plaint. Relief No.3 has not been valued as it depends upon the date of the plaint. In relief Nos.3 and 5 the value of rice will be the one obtaining on the date of the plaint and calculations will have to be made accordingly.

3. The connected papers sent to me are herewith returned.

(True Copy)

For Collector. 18.1.39

18-1-39.

19

From M.R.Ry. K. Sadashiva Rao, Avl.,B.A.,M.L.,
Government Pleader, Mangalore.
To the Collector of South Kanara.
Mangalore, dated 26-11-1937.
Ref.No.A.624/37.

Escheat -Puttur Taluk - Ujre, Vodilnal and Kaliya village
Suit to be filed -

Ref:- Your letter A3.No.4960-37/2412-36 dated 25.11.1937.

I had considered the question of impleading Barabaje Narayana Bhatta as one of the defendants in the suit and did not propose to add him as a defendant for the following reasons:

(1) A Hindu widow is only a limited owner having a life estate in the property left by her husband. She has no interest in the property beyond her life time and hence no property which she can devise by will. She has no power to leave anything by will. The will is therefore a void instrument which confers no interest in favour of the donee.

(2) The said Narayana Bhatta though he originally asserted his right did not come forward subsequent to the Gazette publication and urge his claim under the will.

(3) He is not a person in possession to any portion of the properties and hence he is not a necessary party in the present suit. He may file a suit for declaration if he thinks it necessary.

(4) He was the party that seems to havelbeen impleaded as the respondent and successor-in-title of the widow in R.E.P.1157/32 and R.E.A.512/34 on the file of the District Munsif of Puttur and his rights, if any, in all the properties have been put up for auction and purchased by Budoli Narayana Bhatta. So that he has no subsisting interest in the property.

2. So I did not make him a party in the draft plaint sent to you.

3. I find from the transfer deed dated 12-11-1923 by which Narayana Shastri and his brother transferred the document in favour of Narayana Bhatta, that the transferor acknowledged receipt of interest till 5-10-1919. After that the holders

of the mortgage say that they have not received interest and there is no endorsement on the mortgage document regarding payment of interest. Interest will therefore have to be calculated from 5.10.1919 up to date of plaint, on the mortgage document for purposes of valuation of the plaint. But as the said date is beyond twelve years interest for the last 12 years preceeding the date ~~date~~ of suit, will have to be calculated.

4. Papers sent to me are herewith returned.

(True copy)

For Collector. 18.1.38.

18.1.38.

M/ J.T.H

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying		
When copied		
When examined	24/2	Sayre.
When signed		
When despatched.	DESPATCHED 25 FEB 1938	

SUBJECT :— Escheat — (South Kanara) Puttur Taluk — Bijré — Vodilnal, and Kaliya Villages. Properties of late Govinda Mudithaya — Enquiry report

READ AGAIN ____, dated ____ 19____.

" " ____ " ____ 19____.

READ *ALSO* :—

A No. 342/38 From the Coll of South Kanara, No. L 960/37 dated 17/1/1938 Ppl-6 & 24/12/38

" ____ " ____ " ____ " ____ 19____.

" ____ " ____ " ____ " ____ 19____.

Order / Resolution — Mis. / Rout. No. Ref A 342/38-1 dated 21/2/ 1938.

The Board observes that an outright assignment of the C schedule properties was made to the second defendant though under mistake of fact that he was the immediate vendor, while the vendor who granted the lease had only a life interest in the A schedule properties and had no power to grant such a lease

~~The Board considers~~

~~that~~ The proper course would be to cancel the assignments under Bso 15 paragraph 18 on the ground of mistake after giving notice, and not to declare the properties escheat straightaway. The Coll is requested to consult the local Govt on this point and to revise the plaint, if necessary. ↳ 45-46 Bso Vol I ↳ 2 nj

2/ The Coll has now estimated the value of the properties at Rs 2,500/- exclusive of the cost of the improvements ~~& the~~ while the previous sale ↳ 6 cj was requested to report whether they are worth really Rs 250 with reference to the sale price of similar lands in the vicinity.

3/ The Board also observes ~~considers that the Coll~~ that it is proposed ~~proposed~~ to claim the

p10 of

profits from 15/11/34 in respect of B schedule properties. ~~from reasonably~~ ~~from~~ the date from which the claim is proposed to be made is presumably that on which the first defendant came into possession The Colln is requested to report definitely on this point.

lwg 19/2 19.2.38

19/2/38

To the Colln of South Kanara with ords as per list at p6g

p10 of

profits from 15/11/34 in respect of B schedule properties. ~~so obtainable~~ obtained ~~from~~ The date from which the claim is proposed to be made is presumably that on which the first defendant came into possession The Colln is requested to report definitely on this point

lwg 19/2 19.2.38

19/2/38

To the Colln of South Kanara with records as per list at p6 of

RP 46/A2671

Ref.A3.No.4960-37.
2412-36.

South Kanara Collector's Office,
Mangalore, dated 11th May 1938.

M.R.Ry. Rao Bahadur M.V.Vellodi, Avl., B.A.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue & Settlement,
M a d r a s.

Sir,

Escheat - (South Kanara) - Puttur Taluk - Ujre, Vodilnal and Kaliya villages - Properties of late Govinda Murdithaya - Further report submitted.

Refce: Board's Refce.A.No.342/38-1 dated 21-2-38.

With reference to para 1 of its Reference quoted above, I invite the attention of the Board to section 186 of Mullah's Hindu Law (VII Edition) according to which even a permanent lease executed by a limited heir such as a widow is not void, but only voidable at the option of the ------- reversioners. It does not come to an end at the death of the widow, but on the other hand, it continues to be valid until it is set aside. The Government Pleader, Mangalore, whom I have consulted, is, therefore, of opinion that it would not be proper to cancel the assignment under para 18 of B.S.O. 15 - please see copy of the Government Pleader's letter Ref.No.A. 189-38 dated 14-3-38 (enclosed).

2. With regard to para 2 of the Board's Memo, I submit that the valuation of Rs. 900/- referred to in para 6 of the Puttur Tahsildar's R.Dis. 868-35 dated 25-7-35 has no basis. The valuation of Rs. 1250/- referred to by the Board is apparently the one reported by the Revenue Inspector at page

of the current file enclosed. It was not adopted by the Deputy Tahsildar who gave his own valuation of Rs.2500/- which was worked out on the following basis:-

Village where property lies.	Annual letting value. Rice. muras.	Cash.	Total value.	Assessment payable.	Net annual income.	Market value capitalised at 4%	
Ujre	(a) 12	12-0-0	45-0-0	21-8-0	23-8-0	600-0-0	(a) Valued at Rs. 2-12-0 per mura.
Kaliya	(b) 8	5-0-0	29-0-0	8-12-0	20-4-0	500-0-0	(b) do. Rs.3/- do
Vodilnal	(c) 25	-	75-0-0	18-13-0	56-3-0	1400-0-0	(c) do. do.
Total	45	17-0-0	149-0-0	49-1-0	99-15-0	2500-0-0	

3. The statistics of the sale price of lands in the villages concerned have now been obtained but they are not helpful, as they do not furnish separate figures for different kinds of lands and for buildings and other improvements. Only one transaction relating purely to wet lands could be found, in which two sub-divisions, measuring in all 5.65 acres and assessed at Rs. 18-11-0 were sold for Rs. 920/- in 1936. Taking the total assessment as the basis, the rate of market value works out at about Rs. 50/- per rupee of assessment. Adopting this basis, the value of wet and garden lands alone, which are assessed at Rs. 41-6-0 comes to Rs. 2050/-. I, however, doubt if this can be taken as the real value of the property for the land value is always fluctuating.

4. Coming back to the Dy.Tahsildar's valuation of Rs.2500/- I find that the Dy. Tahsildar had erred in fixing both the rate of capitalisation for arriving at the market value and the price of rice for converting the rent in kind into money value. The capitalisation rate of 4% adopted by the Dy. Tahsildar seems to be too high while the rate of Rs. 2-12-0 or Rs.3/- per mura of rice, too low. Even in probate cases, the Civil Courts adopt the rate of 5% for capitalisation and I think this will give a fair value for the lands and can well be adopted.

5. As for rice, the Revenue Divisional Officer who was

asked to revalue the properties has taken the rent in kind at 42½ muras and proposes a rate of Rs.4/- per mura, but I do not think that there is sufficient reason to reduce the ren from 45 to 42½ muras, nor do I consider that the rate of Rs.4/- per mura is quite reasonable. The average rate at which rice in these villages has been valued by the Civil Courts during the last four years comes to Rs.3.9.0 per mura. According to the Revenue Divisional Officer's proposals, the net annual letting value comes to Rs.142.5.0 and the market value to Rs.2846/-, But, if the rent is taken at 45 muras and the Court rate of Rs.3.9.0 per mura is applied, the net annual letting value comes to Rs.132.10.0 and the market value to Rs.2652/- as detailed in the margin.

Particulars.	Value according to Rev.Divl. Officer's proposal.	Alternative proposal.
Value of rice - 42½ muras @ Rs.4/- per mura.	170. 0.0	
Do. 45 @ Rs.3.9.0 Do.		160. 5.0
Cash rent.	17. 0.0	17. 0.0
Total rent.	187. 0.0	177. 5.0
Deduct assessment at Re-settlement rates.	44.11.0	44.11.0
Net letting value.	142. 5.0	132.10.0
Market value (capitalised @ 5%)	2846. 0.0	2652. 0.0

6. For the ------ purposes of this ---- escheat case, the --- Board may adopt any one of these four valuations. I may, however, add that the value of buildings and other improvements which according to the Revenue Divisional officer is Rs.350/- as against the Deputy Tahsildar's figure of Rs.495/-, has not been included in the valuations and that the value of dry lands has been ignored, being trivial. The fact that mesne profits for the last 3 years is due to Government is also a factor to be considered

7. With reference to paragraph 3 of the Board's Memo. the Government Pleader states that mesne profits have to be claimed for three years prior to the date of the plaint, which is the maximum that can be claimed under law and not from the date of possession by the 1st defendant. The -----

amendments noted in the margin may therefore be made in the draft plaint.

Paragraph III (7) as well as in paragraph V (3) of the draft plaint.

For the words "from 15.11.1934 up to date" in the last sentence, read "for the last three years".

8. The connected records are enclosed.

For Collector. 11/5

17.5.38.

List of records submitted to the Board with the South Kanara Collector's Ref.A3.No. 4960-37, 2412-36, dated 11.5.38.

******

1) Current file pages 1 to 84.

2) Taluk office file pages 1 to 246.

3) Beltangadi Deputy Tahsildar's file D.R:22/1343.

4) Do. D.R.43/1342.

5) Do. D.R.60/1340.

6) South Kanara District Gazette, dated 20.3.1937.

Letter-from the Government Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 14.3.1938.
No.-Ref.No.A.189/38.

******

Escheat - Ujre and Kaliya villages- properties of late Govinda Murdithaya.

******

Reference: Your letter A3.No.4960-37, dated 8.3.1938.
2412-36,

******

I agree that the permanent lease in favour of the 2nd defendant by the widow is not absolutely void, but is only a voidable transaction. If the reversioners do not repudiate that lease it would be a valid transaction. The lease does not ipso facto terminate on the death of the widow. It would therefore not be a proper course to cancel the darkhast under B.S.O. 15, paragraph 18 as there is neither fraud nor mistake of fact in the grant of the darkhast. The only proper way is to repudiate the lease and escheat the properties free from the objections of the 2nd defendant and that has been done in the draft plaint.

With reference to paragraph 3 of the Board's reference mesne profits have been claimed for three years prior to the date of the plaint, the maximum that can be claimed under law and not from the date of the possession of the 1st defendant.

(True Copy)

For Collector.

11.5.38.

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying	7/6/38	[illegible]
When copied	[illegible]	[illegible]
When examined	7/6	[illegible]
When signed	8/6/38	[illegible]
When despatched.		

SUBJECT :— Escheat (Santa Kanara) - Rutlam Pl - Nijre, Vodilnal & Kaliya villages properties of late Goomda Mundthaya Declared escheat - Filing of suit for recovery of possession - approved

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

pict A No. 342/38 From the Collector of S Kanara Dept A 3-4960-37, No. 2412-36, dated 17.1.38 19____. Q

prsty A " 2671/38 " Do " Do " 11-5-38 19____. Q

" _____ " _____ " _____ " _____ 19____.

~~Order~~ / Resolution ~~Ms.~~ / ~~Rout.~~ No. 1596, dated 7-6-38 19____.

In the circumstances reported the Board declares escheat the properties of late Goomda Mundthaya in Nijre Vodilnal & Kaliya villages of the Rutlam Pl S Kanara Dt reserving in the application received from the Collr with his letter first read above and also approves the draft plaint for the recovery of the properties subject to the modifications noted below

(i) Para 1 of the plaint

for the words Government of Madras Province and seven substitute the words "Province of Madras represented"

(iii) Paras III (7) & V (3) after Board

For the words "from 15th Nov 36 upto date" substitute the words "for last 3 years

6638
1914
6638

To The Collector of S. Kanara with reminder as per list noted

ack sent 4/6
sent 7/6

p28 of the copies sent

Nok file

Escheat – (South Kanara) – Puttur Taluk – Eyre vadihal and Kalya Villages – Properties of late Govinda Mandithaya –

A 342 for ff 1–6 cf. from the Collr of South Kanara 4960/37 dated 17/1/38 24/2–36

To AS(LR)

Please see the Collr's letter at the Cite. ff 1–6 cf which explains the full facts of the case.

2, The Collr recommends that the properties mentioned in Schedules A to C to the plaint at ff 12–13 cf may be declared escheat and he proposes to file a suit for the recovery of possession of these properties and for the claim of mesne profits.

Before the Collr's recommendation is accepted, the following points require consideration

(1) In para III (IV) of the plaint it is stated that the second defendant A. D'Souza got assigned in his name the C schedule properties by making use of and solely on the strength of his position as Mulgenant. The said properties which were Kumaki and Kumaki adjunct

to H Schedule properties, and he is bound to surrender possession of the same, along with the A schedule properties and also for past and future mesne profits. It is doubtful whether this contention would be upheld An outright assignment of the C schedule properties was made to the second defendant though under a mistake of fact that he was the sunlgeni tenant while the widow who had only a life interest in the A schedule properties had no power to grant a sunlgeni lease to him. The proper course would appear to lie to Cancel the assignments under Rso 15 paragraph 18 on the ground of mistake, forgiving notice and not to declare the properties escheat straightaway. The Coll may be asked to Consult the local Govt on this point, and have the plaint revised, if necessary

(iii) There is a large disparity in the valuation of the properties

Ex 4238 Vol 46.2

made at different times. In 1934, the deputy Tahsildar valued the properties at Rs 900/- Again in September 1936 the Revenue Inspector valued the properties at Rs 1250 exclusive of improvements. On a reference made by the Coll the deputy Tahsildar estimated the value of the properties at Rs 600 + 1400 + 525 or Rs 2525 exclusive of improvements. This estimate was arrived at by Capitalising the estimated net income at 25 years purchase. In deciding whether it is worthwhile filing a suit it would be desirable to adopt as modest an estimate of the lands as possible. The Coll may be asked to report whether the properties would really be worth Rs 2500/- with reference to the sale price of similar lands in the vicinity.

(iii) The Coll proposes to claim future profits from 15.11.34 in respect of B schedule properties. This is presumably the date from which the

for defendant came into possession
The Coll may be asked to report
definitely about this point...
~~For order~~

lwa
31/1
14.2.38

14.2.38

To AS (CR)
Draft submitted

lwa
19/2
19.2.38

Court is not to cancel the assignment of the C schedule properties under Rule 15(16) there being no mistake or fraud in the assignment but on that and that the only Court is to reprobate the lease and escheat the properties free from the objections of the 2nd Defdt A D'Souza - Para III(4) of the plaint explains the position.

3 Para 2(ii) of the note and paras 2 to 5 of this letter at pp 25-27 Cr

The valuation of the property at Rs 2652/- according to the alternative proposal at p 27 Cr together with the value of the buildings & improvements amounting to Rs 3101/-

a 2(iii) of the note & para 7 of this letter at pp 27-28 Cr

The maximum period for which mesne profits can be claimed being limited to only 3 years prior to the date of the plaint, the Court has claimed with effect from 15-11-34 the date on which the 1st Defdt Court into possession of the B Schedule properties.

5 The properties referred to in the application at p 15 Cr may be declared escheat and the draft plaint at pp 7-13 Cr may be approved subject to the following minor modifications :-

of Madras Insurance and Fines — Substitute the word

" Province of Madras represent

Paras III(7) V(8) of the Manual — for the words "from 15-11-

upto date" substitute the words "for the last

3 years

May be agreed.

Agreed

To CA

Draft submitted

1A

CIRCULATION CHECK SLIP.

B.P. No. 6594 Ac

Dated 7 6 38

Single Member

Two Members

Full Board.

1.A. A.D.S- & L.R., A.S. L.R., A.S. Sett. A.S. Sep. Rev., J.S. Secy. A M.3.M.2.M.1

---

(1) Open file seen by

(2) Final draft seen by

(3) Now circulated to

(4) Initials. KG 11/6/38

Passed for record.

**Secretary
Joint Secretary

A.S. (L.R.,)

A.S. (Sett.,)

A.S. (Sep. Rev.,)

A.D.S & L.R.,

I.A. 11/6 VMC 11/6/38

** Note - Entries not required to be scored out.

MSR/NA